IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 00-02790-CA
DIVISION: CV-B

MICHAEL L. McMULLIN and
KELLI McMULLIN,
Plaintiffs,

vs.

U.S. SMOKELESS TOBACCO COMPANY,

Defendant

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ORAL AND VIDEOTAPED DEPOSITION OF

EDWARD GRIPON, M.D.

SEPTEMBER 27, 2002

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Deposition of EDWARD GRIPON, M.D. taken on the 27th day of September, 2002, beginning at 9:32 a.m., in the offices of Skadden, Arps, Slate, Meagher & Flom, LLP, 1600 Smith Street, Suite 4400, Houston, Texas 77002, before Elaine P. Maspero, RPR, Certified Shorthand Reporter and Notary Public in Harris County, for the State of Texas, pursuant to the Florida Rules of Civil Procedure.

ORIGINAL

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ALSO PRESENT:

Mr. Charles Levin, Videographer

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THE VIDEOGRAPHER: The time is 9:32 a.m. on the record.

EDWARD GRIPON, M.D.,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. SPOHRER:

Q. Good morning, Doctor.

09:32 A. Good morning.

Q. Could we have your full name, please?

A. Edward Brown Gripon, spelled G-r-i-p-o-n.

Q. What is your professional address, please?

A. 3560 Delaware, Suite 502, Beaumont, Texas.

09:32 Q. Thank you, sir. And your profession, please?

A. I'm a psychiatrist.

Q. Are you board certified?

A. I am.

09:32 Q. When did you become board certified?

A. 1979 in general psychiatry.

Q. Have you been recertified?

A. No.

Q. Is there a recertification process in

09:33 psychiatry?

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09:33 A. There is one that applies to people younger than I am. It does not apply to us who took the boards back when I did.

Q. You were sort of grandfathered in, so to speak?

A. I passed the boards back at a time when recertification wasn't necessary and they don't require us to do that.

Q. Although, you are not required to do it, do some of your colleagues take the exam in any event?

A. I have never known one to. I can't imagine why they would.

Q. Tell me about your practice, sort of in

09:33 summary fashion, Dr. Gripon.

A. My practice in Beaumont, Texas, I basically do general psychiatry. I evaluate, treat individuals ranging in age from five to geriatrics, ninety. I evaluate them for mental disorders, treat

09:33 them.

I now do only outpatient psychiatry. I used to do inpatient psychiatry but I stopped that about two years ago.

And another part of my practice is I have

09:34 what's called added qualifications in forensic

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psychiatry so I became board certified in the subspeciality of psychiatry in 1986 and I do forensic psychiatry. And in that area it involves both evaluations in criminal litigation and civil litigation.

My practice is probably about 70 to 80 percent patient care, about 20 to 30 percent forensic.

Q. Did you do any teaching?

A. I have a clinical appointment in Galveston as assistant professor of psychiatry but it's purely a voluntary position. I go there on occasion, but there is no set, nor regular basis for that, so the answer is no.

Q. Okay. Can you tell me what the special training is in forensic psychiatry?

A. Well, again my age is going to come out again. I was grandfathered into that too. When I finished training in 1975, we did not have a forensic fellowship.

In the early '90s, American psychiatric -- American Board of Psychiatry and Neurology allowed people who had extensive experience a window of about five or six years to take the boards based on experience before they closed that. And now it's

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09:35 required that you take a one-year fellowship in forensic psychiatry in order to sit for the boards. I am not formally trained in the sense that I did not do a fellowship.

09:35 Q. So did you receive any specialized training in this subspecialty of forensic psychiatry?

A. Only what was a three-month rotation in what was called the jail rotation in Galveston during my residency with a man who did the forensic psychiatry at that time there.

Q. So someone going into that field today has to have specialized educational training?

A. To be board certified, they do.

Q. To be board certified?

A. People do forensic psychiatry without any formal training and certainly without boards in forensic. But if a person wanted to be board certified now, they would have to be board certified in general psychiatry and they would have to do a one-year fellowship in an approved fellowship program and then take the forensic boards.

Q. How do you get these cases, these legal cases, which make up 20 to 30 percent of your time?

09:36 A. Well, it depends on whether they are

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criminal or rather, in the criminal justice system or civil. Basically, to answer the question in the shortest possible manner, you get them by word of mouth, by reputation and by having done that kind of work.

I'm appointed by eight counties to do evaluations for competency and sanity so in criminal areas I'm the only one who does them. Somebody else could now, but I'm basically the only one who does them.

Q. Okay.

A. In civil litigation it normally comes from, as I understand it, lawyers asking lawyers if they are looking for someone with psychiatric training, they may call you, they may not.

Q. Are there doctors within the State of Florida, psychiatrists that have your background and training?

A. I'm sure there are.

Q. Are there doctors with your background and training in the north Florida area?

A. I'm sure there are.

Q. Do you advertise your availability to consult with attorneys in any fashion?

A. No.

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09:37 Q. Is your name listed in any directories of expert witnesses?

A. Not to my knowledge.

Q. Have you done work before this case for any of the law firms representing U.S. Smokeless Tobacco?

A. Yes.

Q. And which firm would that be?

A. Jacob Medinger. I have done, well, that case never went anywhere but I was contacted by them a number of years ago in a potential case, but actually I never did anything.

Q. Okay. Tell me about that case, please.

A. Well, it was a smokeless tobacco case involving an elderly lady, who if I remember correctly, was living in the state of Mississippi. I think she subsequently died. I was never deposed. I never participated in any aspect of the case other than to talk with the attorneys about issues involving clinical dependency of tobacco and that sort of thing. That was my only involvement with them.

And subsequent to that, there is a case involving cigars in cigar usage in West Virginia that I have again consulted or talked with them

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about. I have done nothing further.

Q. And with which firm have you been working on these other cases?

A. Jacob Medinger.

Q. Okay. And who specifically is your point of contact on those cases?

A. Jun Chul Whang.

Q. Say that name for me?

A. Jun Chul Whang.

Q. Is that J-u-n C-h-u-l W-h-a-n-g?

A. It is.

Q. Pronounce the name for me, please?

A. I don't know that I'm pronouncing it right. He's not here to defend himself.

Q. We'll just refer to him as Mr. Whang. Is that okay?

A. That will work.

Q. Okay. And Mr. Whang has been your point of contact on the smokeless case in Mississippi which as you say was dormant or nothing happened with it, and then with another case involving cigars in West Virginia, which is also dormant, to your knowledge?

A. Yes. There had been another attorney with that firm, Ann Ladd, who I had spoken with and who

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had been with Whang and every time we had met.

Q. Okay. When were you first contacted with regard to the McMullin case, sir?

A. This summer.

Q. Can you tell me when this summer?

A. June, late June.

Q. Okay, sir, who contacted you and in that what way?

A. Mr. Whang.

Q. What did he say to you, if it was a phone call?

A. I don't remember. He stated something to the effect of there was a case involving smokeless tobacco. He would like to meet with me to discuss the case and would I set aside time to meet with him.

Q. And did you?

A. I did.

Q. Where did you meet with him?

A. In New York.

Q. And that was sometime this past summer as well?

A. It was the end of the first week or within the first 10 days of July.

Q. How many trips to New York have you worked

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09:40 -- had on this case?

A. One. That one.

Q. Okay. And on that first meeting what did he tell you about this case?

09:40 A. Told me there was a case in northern Florida that had a fairly narrow window of time line, that it would be going to trial probably, if it stayed on track, in this fall. That it involved a very young man who had developed an oral cancer, a 09:40 tongue cancer. That they were looking at exploring the possibility of issues involving chemical dependence, asked me if I would be willing to evaluate or assess the individual if allowed. That's what he told me.

09:41 Q. Okay. Is that the same type of work that this lawyer had asked you to assist on the two other cases, the smokeless tobacco case in Mississippi and the cigar case in West Virginia?

A. The smoke -- the case in Mississippi never 09:41 actually went even that far. I don't know whether -- that lady was quite elderly and I don't know where it was going at that point and it never went anywhere.

In the one in West Virginia, I have 09:41 basically been told that they have not identified

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09:41 the exact plaintiffs and the number of individuals who are involved in what apparently is a class action, as best I understand it; that they are going to narrow that down next year, or over the winter this year to eight to ten. And whether I will be allowed to see anyone, what I'll do, I have no idea, if anything.

Q. But did you understand that the reason these lawyers were contacting you, a psychiatrist in Texas, was to consult with them on issues involving nicotine dependence?

A. Yes.

Q. And that was the purpose of your being consulted in the McMullin case?

A. Yes.

Q. So back to your meeting with Mr. Whang, what else did you discuss with him at that time?

A. At the actual meeting in New York?

Q. Yes, sir.

A. He talked about the case in the sense of the age of the individual. He talked about the medical information that they had. I attempted to determine if there was any kind of psychiatric history, what issues might be relevant to my narrow area of expertise.

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There didn't seem to be any other than he had used this particular product and whatever issues of dependency there might be.

We talked about general issues of tobacco usage. It encompassed most of the day.

Q. In that meeting with Mr. Whang in New York, did he show you any documents?

A. No.

Q. Okay. No depositions, no medical records, nothing related to McMullin?

A. No. What I have received in regard to that and reviewed has been sent to me. At that meeting I had nothing, and was provided nothing.

Q. At that meeting did Mr. Whang ask you, ask you your views on nicotine dependence?

A. Yes.

Q. What did you tell him?

A. I told him that I followed the DSM-IV issues involving chemical dependency with nicotine being listed as one of the agents that could potentially cause psychological and/or potentially some physiologic dependency.

I talked to him about the -- the problems we had had in psychiatry arriving at a definition of, quote, addiction. Difficulty with a definition

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for addition.

And we spent, as I recollect, a lot of time talking about the many areas of stated addiction that do not require or allow for chemical models or interpretations such as gambling addiction, shopping addiction, internet addiction, that sort of thing. Just a general discussion.

09:44 Q. At the conclusion of that meeting, did you have the sense that this attorney was going to consult with you further on the McMullin case?

A. I don't know that I could truly say that. Psychiatry is an area in which there is apparently significant debate behind the scenes as to whether to kick that sleeping dog or not. I don't know that I had a feeling for whether they would move forward with that or not.

He was going to talk with various other individuals and they would get back to me, which they did.

09:45 Q. When you say "kick that sleeping dog," what do you mean?

A. Psychiatry is not the favorite medical specialty, in my opinion, of attorneys at the courthouse.

09:45 Q. Why is that?

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09:45 A. Many reasons. Probably it's accused of being more subjective than other areas of medicine, although that may not be totally true. It is an area that has a lot of subjective interpretation or 09:45 open for that.

It is an area in which opinion has been for a long time a significant aspect of what one might offer, although that's all anyone has anyway. It's just controversial sometimes the area, the role 09:45 of psychiatry and legal issues. At least that's been my experience over 30 years.

Q. Okay, sir, what was your next contact with anyone regarding the McMullin case after the New York trip?

09:46 A. They sent me a small stack of information, document, collateral information over a period of time with most of it actually arriving in August and September.

Q. I had a chance to go through that before 09:46 we started the deposition and it appears the majority of those pages in front of you are deposition transcripts of Michael McMullin, his wife, family and friends?

A. That's true.

09:46 Q. Okay. Have you looked through those?

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09:46 A. I have.

Q. Have they been of any significant use in your work in this case?

A. They are helpful. I can't say that

09:46 they're -- when one uses the term "significant use." As you try to understand a person, you try to put together some kind of picture of their emotional makeup. Their reflection statements, whatever is said by others, can be helpful. Now, they can be

09:46 contradictory. They can lead you astray. They can do all kinds of things. But they are not unhelpful.

Q. Now, you also have a letter there, sir, dated July 17 from Ms. Moreno, a paralegal, which says, "At the request of Jun Whang," who is the

09:47 attorney from the Jacob Medinger Finnegan firm, enclosed please -- it says, "enclosed please material for your review. Should you have any questions regarding the foregoing, please do not hesitate to call me."

09:47 Then attached to that is a bibliography of materials which looks like the first five documents are what I would characterize as medical or scientific articles. Is that true?

A. Yes.

09:47 Q. And how is it that the attorney Jun Whang

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09:47 sent you those medical articles?

A. I don't know the answer to that. You would have to ask him.

Q. Okay.

09:47 A. He mentioned Frank and Dar in some book, a book that they had published, written, during the meeting in New York, subsequently sent it to me.

Q. These are five works or articles in which the authors are critiqueing the concept of nicotine

09:48 addiction. Is that a fair statement?

A. Yes.

MR. KUHLMAN: Object to form.

Q. (BY MR. SPOHRER) I gather you did not ask him to locate and copy and send you these. These

09:48 were sent to him -- sent by him to you on his own decision?

A. That is correct.

Q. Did you read those articles?

A. I did.

09:48 Q. Did you find them helpful to you?

MR. KUHLMAN: Object to form.

A. Not terribly.

Q. (BY MR. SPOHRER) Sir, when was the next time you had any contact with anyone relating to

09:49 this matter?

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09:49 A. Well, as the dates on this would reflect, some of this would arrive at the office without any contact on my part as to that, then I would review it.

09:49 We had one additional meeting that was in Houston, Texas at the George Bush Intercontinental Airport that encompassed three or four hours and that was in August sometime.

Q. And who was at that meeting, sir?

09:49 A. Actually, Mr. Whang, Mr. Kuhlman.

Q. Mr. Whang and Mr. Kuhlman?

A. Yes.

Q. Both attorneys from the Jacob Medinger & Finnegan firm?

09:49 A. Yes.

Q. What was discussed at that meeting?

A. We discussed further the possibility of my being allowed to talk with Michael McMullin, talked in general about the same topics, nothing terribly

09:50 specific. It was kind of an update.

They let me know sort of where the -- how the legal issues were progressing at that point in time and that it looked like there would potentially be a trial in October.

09:50 Q. All right. Anything else during that

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09:50 three-hour meeting?

A. No.

Q. And the next contact you had with anyone, sir, was when?

09:50 A. There was some telephone and/or fax transmission in regard to setting up, their setting up, not mine, the time in which I would visit with Michael McMullin. Ultimately, that was set. The next time I saw anyone who was an attorney was in

09:50 Jacksonville.

Q. That was when you came to Jacksonville and you and I and attorneys for U.S. Tobacco met in a court reporter's office and you had an opportunity to interview Mr. McMullin?

09:51 A. That's correct.

Q. All right. Then after that, Doctor, have you had any further contact with anyone about this case prior to your meeting this morning?

A. The two attorneys to my right came to

09:51 beautiful downtown Beaumont, Texas about two weeks ago for a meeting.

Q. Okay.

A. We met a couple of hours in the afternoon on a Tuesday.

09:51 Q. Okay. Then Mr. Bernardo and Mr. Kuhlman

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09:51 came to your office in Beaumont and that was for what length of time?

A. Two hours, about.

Q. Did they ask at that point what your opinions were based on your interview with Mike?

09:51 A. Yes.

Q. Did you like Michael McMullin?

MR. KUHLMAN: Object to form.

A. Well, it's not my place to like or dislike people that I examine. I found nothing about him that was necessarily -- that I would find particularly objectionable. He was easy to interview so, therefore, I had no problem with him.

Q. (BY MR. SPOHRER) Okay. Tell me, if you would, what these attorneys asked you at that meeting in Beaumont, Texas and what you said.

A. Well, they asked me about the interview since they were neither there. They asked me what my opinion or conclusion was as to the issue of dependency and the ability to cease utilization of whatever product.

They asked me about my availability for a time of trial and we talked about the time of this deposition.

09:52 Q. Okay. Doctor, are you a member of the

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American Psychiatric Association?

A. No longer.

Q. Why not?

A. I resigned this year. No particular reason, 30 years of membership. I'm winding down.

Q. Is that -- do you believe that to be a reputable organization?

MR. KUHLMAN: Object to form.

A. It is.

Q. (BY MR. SPOHRER) Is it the premier organization for your particular medical specialty?

MR. KUHLMAN: Object to form.

A. It is.

Q. (BY MR. SPOHRER) Is nicotine a drug?

MR. KUHLMAN: Object to form.

A. It would depend on how you would define it. It has some properties that would clearly potentially have some drug related potential.

As far as a definition, again, it's not defined as a drug controlled by the FDA, that sort of thing. I would not define it as a drug, but it has some chemical properties.

Q. (BY MR. SPOHRER) Is it a substance which induces a physiological reaction in the user?

A. Yes.

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09:53 Q. Is it a substance which can create addiction in the user?

MR. KUHLMAN: Object to form.

A. I don't use the term "addiction" so I 09:53 can't answer that question.

Q. (BY MR. SPOHRER) I'm sorry to interrupt, but you don't use it for anything or just for nicotine?

MR. KUHLMAN: Object to form.

09:53 A. I don't use it for nicotine and I basically don't use it for anything unless I put it in quotation marks and state that it's ill defined. And I don't know exactly -- depending on who I'm talking to what, we're talking about, so I don't 09:54 tend to use it.

Q. (BY MR. SPOHRER) Okay. Fair enough. But you would not use it if we were talking about heroin, for example, you would prefer not to use that term?

09:54 MR. KUHLMAN: Object to form.

A. I would be more comfortable if one wanted to use the term "addiction" if we were going to use the medical model for heroin addiction, although I still think that is problematic. The term has been 09:54 used in any number of other areas and ways and

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09:54 that's why I don't tend to use it.

Q. What word do you prefer to use?

A. Dependency and substance abuse, substance dependency or substance abuse.

09:54 Q. Tell me what your definition is of dependency?

A. Basically, I use the same one used by DSM-IV and that's maladaptive pattern of behavior in which a person is utilizing, if it's a drug, they

09:54 are utilizing a drug and either being dependent on it physiologically or psychologically or abusing it in some fashion. And I think it has several different aspects including environmental, biological, cognitive. So I think it has a number

09:55 of complex issues.

Q. Okay. You have in the materials you brought here several pages. Am I correct in assuming these are from the DSM-IV?

A. Yes.

09:55 Q. And do you believe that is the authoritative work on, well, strike that.

Do you believe that is an authoritative source on the subject that you and I are discussing now?

09:55 A. It is. It was the last published source

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09:55 regarding substance dependency and substance abuse, although it is, of course, subject to revision and DSM-V will be forthcoming in the next two years. So it is not going to be cast in stone, but it's authoritative in the sense it's the best they could do in '94.

Q. Returning to my earlier question and substituting the word "dependency" for the word "addiction," do you hold an opinion as to whether or not nicotine is a dependence producing substance?

A. I think there are elements of dependency both psychologically and to a much lesser extent physiologically that can be created in regard to dependency and the issue of nicotine, yes.

09:56 MR. SPOHRER: Go off the record for two minutes, please. Take a break.

THE VIDEOGRAPHER: Time is 9:57, going off the record.

(Pause from 9:57 to 10:10 a.m.)

10:09 THE VIDEOGRAPHER: Time is 10:10, we're on the record.

Q. (BY MR. SPOHRER) Dr. Gripon, we have had a chance to look through your file and I have your typewritten notes of your interview with Mr. McMullin. Where are the handwritten notes?

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10:09 A. I destroy them after I dictate the typewritten report.

Q. And how do you go about using the handwritten notes and developing the typewritten notes?

10:10 A. Only just as something to jog my memory. Now that interview was, of course, videotaped so there was ample opportunity to find any part of that that I needed. But as a normal rule, I take a few handwritten notes and then when an interview is completed, I dictate a formal note.

Q. So the formal note, typewritten note here you dictated from your handwritten notes?

A. I did.

10:10 Q. And at what length of time after the interview did you do that?

A. As soon as I returned to Beaumont. In that particular case it would have been later that evening.

10:10 Q. Okay. Have you removed anything from your file on this case?

A. No.

Q. Has anybody else removed anything from your file in this case?

10:10 A. No.

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10:10 Q. Do you have a bill or an invoice for the work you have done on this case to date?

A. No, I haven't. I can estimate approximately the amount of charges and they would 10:11 be in the neighborhood of about $20,000.

Q. And how much per hour are you charging?

A. I charge 325 an hour.

Q. And is that for everything, depositions, consulting, interviews or is there a different rate 10:11 for different chores?

A. There are different rates for deposition and testimony. I charge $750 for the first hour, and I think 350 or something like that for every hour after that. And some of it's done on a half 10:11 day and some are on all day, depending on how you have to block the time out, because basically I'm charging for the time that I'm away from my office.

Q. What about your time for trial?

A. The same.

10:11 Q. 750 for the first hour?

A. Well, in that case because I will go down there, if I go and I'm asked, in some block of time with some hopeful expectation of when I'll return, I will probably bill that on a daily or half day rate.

10:12 Q. What will that be?

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10:12 A. I charge $3,500 a day, half of that for a half day.

Q. But your charges are, I assume, portal to portal, so --

10:12 A. They are.

Q. Hard to get from Beaumont, Texas to Jacksonville Florida and back in half a day.

A. You won't.

Q. So we are talking basically $3,500 a day 10:12 for your work?

A. Yes.

Q. Okay. Have you reached a point, Dr. Gripon, where you believe you have concluded the background work, the necessary preparation in order 10:12 to formulate your opinions in this case?

A. Yes.

Q. Okay. Is there which you feel remains to be done from your aspect or your perspective as to your work on the case?

10:12 A. Well, I was told yesterday evening that there had been a request after I left my office for a written report and, obviously, if there is a request and there is one that is due, I will do it.

Q. We may be able to dispense with that in 10:12 light of your detailed notes here and I would take

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it that a written report would be in large measure very similar to what your notes contain?

A. Certainly do not plan to contradict myself.

Q. Okay. So Mr. Bernardo and I will discuss that afterwards and we may be able to spare you that additional chore. But putting that aside, any other work you have planned?

A. No.

Q. Okay. Are you planning on coming to Jacksonville for the trial later this fall?

A. If asked.

Q. What in outline or summary fashion are the opinions that you have arrived at based on your work on this case?

A. Well, my opinions are based upon reasonable psychiatric probability and they relate to the psychiatric use of the use of a nicotine containing compound, in this case moist tobacco, the fact that he did use this product. That's a known fact. That there is the potential for some psychological and limited physiologic dependency. And that even if that did occur, it would be my opinion that with proper motivation or with adequate motivation, he could have stopped the use of the

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product as he did.

Now his basis for motivation changed, but at any point in time the same mechanism would have been in place, same coping skills, same individual involved. So that he used an agent and that he could have stopped, that he made a volitional choice to use it, and that he did ultimately stop.

Q. Okay. Is that in summary fashion the opinions that you have arrived at?

A. Yes.

Q. Let me explore that with you. First of all with respect to the dependence on nicotine, do you know approximately what percentage of people who are dependent upon nicotine attempt successfully to quit in a given year, say?

MR. KUHLMAN: Object to form.

A. No. I have read varying statistics in regard to that with some of them indicating that only about 10 percent of whoever attempts to quit actually successfully does quit in a given period of time. And obviously, with the more attempts, the higher the rate of success, but I don't know the specific percentages of those.

Q. (BY MR. SPOHRER) Would you think that probably is a realistic percentage that in a given

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10:15 period of time 10 percent of those who want to quit are able to quit?

MR. KUHLMAN: Object to form.

A. I don't have any reason to quarrel with it, but I have no basis on which to say that that is accurate, based upon some, you know, true study, I don't know. I have seen that in print.

Q. (BY MR. SPOHRER) Does the DSM comment on that?

10:15 A. It may. I don't know. I would have to read it again to see.

Q. Okay. Would it be your view that the 90 percent of people who are nicotine dependent who are unable to quit in a given time frame lack, quote, adequate motivation?

10:16 MR. KUHLMAN: Object to form.

A. I think motivation is the primary driving factor that tends to lead to failure; that they return for reasons that are not solely related to lack of motivation.

10:16 They continue to find satisfaction with continued use and any number of other reasons, but obviously, they don't have the adequate motivation, if that is their true goal.

10:16 Then one has to always define what an

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actual attempt means. You know, meaning what's a legitimate attempt? What's a -- Michael McMullin used the term half-hearted attempt. What's a real attempt. You have to get that from an individual.

Q. (BY MR. SPOHRER) Was there a physiological or physical component of Michael McMullin's dependence or use of smokeless tobacco?

A. He did not describe one to me. Now, it's reported with nicotine, but he did not describe one. He described a physiological component in which he talked about sounds when people would open a tin and certain times of the day and certain triggers that timed or related it to certain activities.

I asked him about returning to the use when he quit for a couple of periods of time for approximately 10 days or so, asked him why he went back. And as you may remember from his answer, he said he didn't know. He did not give me a physiological explanation for that, just said he returned to it. There could have been some physiological parts to that. He didn't describe them.

Q. Do you remember him using the word "craving" in his discussion with you?

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10:17 A. No. I remember him using -- I would have to review that tape. I remember him using the term "nicotine sensations," I believe was the term he used, something that he said he still had to this day.

Q. Do you hold an opinion as to whether or not Mr. Michael McMullin had any physical features of dependence on nicotine?

A. Only that he didn't describe any.

10:17 Q. So based on that, what is your view?

A. That he was unaware of any or didn't describe any and he was given an opportunity to do so.

Q. His description of salivating like

10:18 Pavlov's dog when he heard the sound of a can opening, what do you call that?

MR. KUHLMAN: Object to form.

A. I would think that would be a psychological component. That's similar to what he

10:18 has even now some almost four years later. That's a psychological trigger.

Q. (BY MR. SPOHRER) The fact that he felt he was losing control, how would you describe that?

MR. KUHLMAN: Object to form.

10:18 A. That is a manner in which some people

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attempt to quantify. It's some people's actual basis for which they define addiction is that any point in time any compulsive or any act that has a compulsive component becomes relatively unmanageable. Again, I think that is more psychological than physiological.

Q. (BY MR. SPOHRER) Is nicotine a -- do you understand the -- well, strike that.

Have you studied the pharmacokinetics of nicotine?

A. No.

Q. Do you have any expertise in that area whatsoever?

A. No.

Q. Do you know the effect of nicotine on nicotine receptors in the brain?

MR. KUHLMAN: Object to form.

A. Only in the sense of it's reported that there is an activating type of effect in which some people report certain kinds of physiological results from utilization of nicotine in most commonly stating that they have an increased clarity of thought and are a calming effect.

Q. (BY MR. SPOHRER) Did Michael in your view develop a tolerance to nicotine?

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A. Certainly.

Q. Did he experience any withdrawal symptoms when he attempted to quit?

A. He didn't describe any physiological withdrawal symptoms. Psychologically, they would have been present because of a desire to return and since he did return.

Q. Okay. Did you review Michael's deposition transcript where he was interrogated at some length about his use of nicotine or spit tobacco and his attempts to quit?

MR. KUHLMAN: Object to form.

A. I did read it.

Q. (BY MR. SPOHRER) Okay. Did that assist you in your assessment of this young man and his use of smokeless tobacco?

A. Yes.

Q. Some?

A. Yes.

Q. You are smiling. Is that because the deposition took so much of your time to read or what?

MR. KUHLMAN: Object to form.

A. No, I was actually smiling when you used the term "interrogated."

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10:20 Q. (BY MR. SPOHRER) Okay. What does the DSM-IV say about nicotine dependence and withdrawal and why is it that you believe that based on your interview with Mr. McMullin that he does not fit 10:21 that criteria?

MR. KUHLMAN: Object to form.

A. Well, I stated in regard to dependence, he could meet that criteria. In regard to withdrawal, I stated that he did not report to me physiological 10:21 withdrawal symptoms.

He did mention a continued loss of whatever pleasure and whatever other effects he had from using the product, but he did not give specific withdrawal symptoms when I interviewed him.

10:21 Q. (BY MR. SPOHRER) So do you hold an opinion as to whether or not Michael McMullin was dependent on his use of smokeless tobacco?

A. In the definition of DSM-IV, yes.

Q. And how did that dependence manifest 10:21 itself in this patient or in this young man?

A. The tendency to feel a benefit or a pleasure or a response from the product, a tendency to redose. Over time as one uses most products or many at least, there is a tendency to increase 10:22 utilization and part of that, just part of it is

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10:22 based upon tolerance to certain aspects of the product.

Q. Okay.

A. Again, DSM-IV says that you have to have a maladaptive pattern of behavior for that to be truly chemical dependence and I don't know that you can state that it is maladaptive to use moist tobacco, but we still tend to apply that.

Q. Okay.

10:22 A. But there is argument as to whether that should be applied under those circumstances as compared to someone who is clearly using an illicit drug and pursuing something they should not be doing for obvious reasons.

10:23 Q. So just so I am clear on this, it is your view that this young man was dependent on smokeless tobacco and it is also your opinion that he did not exhibit the DSM-IV criteria for withdrawal symptoms?

MR. KUHLMAN: Object to form.

10:23 A. He did not describe them to me, that's correct.

Q. (BY MR. SPOHRER) Okay. Did he describe them to the lawyers in their questioning him in his deposition?

10:23 A. He mentioned some that I think you could

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probably apply to that in a broad sense, yes.

Q. Which ones were those?

A. I don't remember that. I would have to read that again, but I would be happy to do that and I can tell you which ones, but I don't remember them --

Q. If you would do that before the trial, I would like to ask you about that when we meet again.

A. Okay.

Q. So at the deposition he did describe some behaviors, which we won't talk about now, but which you recall being within the DSM-IV criteria for withdrawal?

A. Potentially.

Q. Okay. And I think we're clear on the fact that Skoal and Copenhagen, the products made by the defendant here, contains nicotine. Correct?

A. I wouldn't argue against that statement.

Q. And that that, therefore, it is a potentially dependence causing substance?

MR. KUHLMAN: Object to form.

A. Potentially, yes.

Q. (BY MR. SPOHRER) And a potentially -- and a substance which potentially causes withdrawal

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10:24 symptoms when one tries to wean himself off of it?

MR. KUHLMAN: Object to form.

A. In some people that's true. It's not certainly not true in all, but in some that's certainly true.

10:24 Q. (BY MR. SPOHRER) Okay. Now, he described for you his attempts to quit. Correct?

A. Yes.

Q. He described for you that his girlfriend, 10:24 who became his fiancee who became his wife, wanted him to quit because she thought it was a disgusting habit?

MR. KUHLMAN: Object to form.

A. Yes.

10:24 Q. (BY MR. SPOHRER) Would you view that as pretty strong motivation for a young man?

A. I don't know. Could be. Depended on how much he valued her opinion in that regard.

Q. In that regard, he promised her for their 10:25 wedding that he would quit. Do you remember that?

MR. KUHLMAN: Object to form.

A. Yes.

Q. (BY MR. SPOHRER) In fact, on their honeymoon in Jamaica, he did quit for a period of 10:25 time?

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A. Yes, sir.

Q. So would you believe that he was adequately motivated at least at that point in time to try to quit this habit?

A. I don't know the answer to that. Apparently not, meaning that he at least did lip service to the fact that he was going to quit. He did quit for a period of time but then he returned to it. So I can't say that that was adequate motivation.

Q. How do you or how does anyone gauge whether someone's motivation to do anything is adequate or not?

A. That's very difficult. It's done predominantly based upon the degree to which they make some kind of logical and reasonable plan and attempt apparently to follow through on that plan. And then one has to look at the reasons for which they return to usage, but there is not a real clear bar or standard for that so as you quantify it or as I tried as a psychiatrist, it's difficult to do.

Now with that stated, some people say I'm going to try to quit and they make no discernible effort that anyone can find. Then others go to substantial extreme.

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10:26 When people seek some type of treatment, make some kind of life style change, quit purchasing a product, take other steps or means to try to break or alter a substantial behavior or habit, there are ways that you feel that is a more credible extent -- attempt, but it's still subjective in my opinion.

Q. Don't you believe based on what he told you at the interview and what he told the lawyers at his deposition that Michael made repeated good faith efforts to try to quit using smokeless tobacco?

MR. KUHLMAN: Object to form.

A. Well, he used the term to me "half-hearted efforts" when I interviewed him. Now that may be Michael McMullin looking back on those efforts now. That is something of a value judgment. I don't think he was highly motivated to quit at any time until he was diagnosed.

Q. (BY MR. SPOHRER) So why was he continuing to use the product then if, in your view, he could have quit and didn't?

A. Apparently he found it enjoyable, found it to be a positive experience.

Q. And what did he --

A. Even though there was negative statements by others, but it was apparently something that he

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felt that the benefit outweighed the risk.

Q. And that's the benefits of the nicotine?

MR. KUHLMAN: Object to form.

A. The benefits of the product. It's not all nicotine alone, in my opinion. You can provide nicotine to a person in any number of ways and frequently they are not very happy with those other vehicles of administration. And there are some products that are associated with certain kinds of behaviors and certain kinds of habits that seem to be much harder for some people to give up because they find them pleasurable and it's more than just nicotine.

Q. (BY MR. SPOHRER) Doctor, I'm reading your typewritten notes Roman numeral page V. Could you look at those with me?

A. Page V?

Q. Yes, sir. The heading of "discontinuation efforts."

A. Yes, sir.

Q. He told you that on approximately 10 times he would throw the can of smokeless tobacco in the trash and then go back several hours later and salvage it and start using it again. What do you make of that?

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10:29 A. That's intellectual attempt at quitting without much practical basis to it. He graduated that to washing out the can. I think so that if he went to retrieve it, there wasn't anything in it, 10:29 which was another step in the process of --

Q. Okay.

A. -- discontinuation.

Q. Then you say he did state that he made two more concerted efforts. Am I reading that 10:29 correctly?

A. Yes.

Q. So those two concerted efforts, one was prior to his wedding. And we have spoken about that. Do you believe that he just was not 10:29 adequately motivated to quit at that time?

A. I think lack of adequate motivation and a willingness to return to using the product certainly was the primary reason he returned to using the product.

10:30 Q. And what role does the dependence play on his unsuccessful efforts to quit?

MR. KUHLMAN: Object to form.

A. I don't know that I can answer that. Psychological dependence, recollection of whatever 10:30 pleasure, whatever other aspects of utilization

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10:30 would potentially play some role as one tended to weigh the benefits as opposed to the costs, the risks, the whatever. Physiological aspects in that particular type of nicotine use, I don't think you would play much 10 to 12 days later, if any.

Q. (BY MR. SPOHRER) You are aware of the fact that Michael, once he was diagnosed and treated, actually smoked cigarettes on a couple of occasions?

A. I am.

Q. And what is your belief as to why he did that?

A. I don't know why he did it. I can't say that it was because he was trying to replace nicotine. It may have been related to stress. It would be very stressful to be diagnosed with cancer of any type.

And he mentioned in very -- various ways during my evaluation of him that he used this product, not cigarettes there, but this product as stress management during periods of stress, during periods of boredom. I would believe it probably had more to do with stress management than anything else.

Q. Does nicotine have an effect on somebody's

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level of stress?

MR. KUHLMAN: Object to form.

A. It tends to be utilized to a greater extent during periods of increased distress. So the answer is, it can if you otherwise use nicotine.

Q. (BY MR. SPOHRER) You are familiar with the case studies of people who are inveterate cigarette smokers who are diagnosed with cancer of the throat and have part of their larynx amputated and have to speak through a hole in their throat? You are familiar with?

MR. KUHLMAN: Object to form.

A. Only in passing.

Q. (BY MR. SPOHRER) I understand. I'm not going to grill you on that. But are you aware with the fact that some of those patients continue to smoke cigarettes through that hole in their throat --

A. Yes.

Q. -- because they are addicted to the nicotine; is that right?

MR. KUHLMAN: Object to form.

A. That would be one potential explanation for that.

Q. (BY MR. SPOHRER) What others are there?

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10:32 A. Well, I don't know that they are doing it just because they're nicotine addicted. They could do that because they had smoked for many years and continued for a number of reasons.

10:32 Q. Well, give me some.

A. They could get nicotine through some other means. If they were truly trying to replace nicotine, one could easily give a replacement patch and replace nicotine. I have seen examples in which 10:32 they smoked anyway. So it had to be some other factor other than just nicotine alone.

Q. What would you just speculate that it would have been? I mean, do they like the taste of smoking a cigarette through their throat?

10:33 MR. KUHLMAN: Object to form.

A. That could be part of it -- I don't know through their throat. Habit: They've used cigarettes all those years. As one patient told me one time, "I'm going to die of something, I'm not 10:33 going to give this up." There is all kinds of reasons that people engage in behaviors.

Q. (BY MR. SPOHRER) Do you have any experience in conducting smoking cessation groups?

A. No.

10:33 Q. Have you ever used tobacco yourself?

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10:33 A. Not really.

Q. That's pregnant with all kinds of possibilities.

A. Well, I can't say that I have -- I have smoked less than a half dozen cigars in my 59 years. I have smoked less than half a pack of cigarettes and I have never used any of the other products. So I would say, not really.

Q. I would too.

10:34 Do you believe that tobacco contains carcinogens?

MR. KUHLMAN: Object to form.

A. Well, it's reported that they do. I don't have any personal or any professional knowledge of that. There are reported agents in tobacco that have been related to being carcinogenic and I think there has been a number of them identified. There is some debate regarding that. I don't have a problem with that statement.

10:34 Q. (BY MR. SPOHRER) I mean, in general as a physician, and you were an internist, I assume, before you were a psychiatrist. Right?

A. I had a general medical degree before then. I never was an internist. I did an

10:34 internship.

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10:34 Q. As a medical doctor, would you agree that patients should be discouraged from using any form of tobacco products?

MR. KUHLMAN: Object to form.

10:34 A. As a general rule regarding a health care -- a recommendation, the answer is yes.

Q. (BY MR. SPOHRER) Why is that, sir?

A. Because of concern as to the potential for long term health care, potential adverse effect.

10:35 Q. Do you have any reason to disagree with the findings of the Surgeon General of the United States that the use of smokeless tobacco causes oral cancer?

MR. KUHLMAN: Object to form.

10:35 A. I don't have any -- I can't answer that with reasonable psychiatric probability of it. I don't know.

Q. (BY MR. SPOHRER) You have no reason to dispute that?

10:35 MR. KUHLMAN: Object to form.

A. I don't know what the Attorney General (sic) based that, but I don't dispute that -- if that's the Surgeon General's statement, then that's the Surgeon General's statement.

10:35 Q. (BY MR. SPOHRER) Sure. Do you believe

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10:35 that 18 year olds are responsible decision makers?

MR. KUHLMAN: Object to form.

A. I'm sorry?

Q. (BY MR. SPOHRER) Do you believe that 18 year olds are responsible decision makers?

10:36 MR. KUHLMAN: Object to form.

A. Some are, some aren't.

Q. (BY MR. SPOHRER) Do you believe that 18 year olds have good judgment?

10:36 MR. KUHLMAN: Object to form.

A. Some do, some don't.

Q. (BY MR. SPOHRER) You were in the Air Force?

A. I was.

10:36 Q. Did you fly?

A. I did.

Q. What did you fly?

A. I was a flight surgeon. I was a navigator in F-4 Phantoms, which back at that time was, that 10:36 was a long time ago, Vietnam conflict was a hot airplane. I flew as navigator in a F-4 phantom.

Q. Did you as flight surgeon ever have occasion to consult pilots who were on extended missions and were going through nicotine withdrawal?

10:36 MR. KUHLMAN: Object to form.

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10:36 A. No.

Q. (BY MR. SPOHRER) Were they allowed to smoke in their cockpit?

A. No.

10:36 Q. Did any of them use smokeless tobacco?

A. No. Not that I remember. Now, this is 1969, 1972.

Q. What was a long sortie at that time?

A. We didn't do any. I was protecting the

10:37 Colorado River in Austin, Texas from the Vietcong so our long sorties were about half a day.

Q. And a darn good job you did, too.

A. Well, the University of Texas, they infiltrated some of it, but...

10:37 Q. I guess my point is simply that as a flight surgeon in the Air Force, did you give any thought to or do any work on the subject of young men in combat who may be going through nicotine withdrawal?

10:37 MR. KUHLMAN: Object to form.

A. I don't remember it ever mentioned that long ago.

Q. (BY MR. SPOHRER) I want to talk with you, sir, about your other cases that you have worked

10:37 on.

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10:37 A. Okay.

Q. Let's start with the criminal case in which you testified in Jasper, Texas. Could you tell me about how you happened to be involved in that case? Do you know what I'm referring to?

10:37 MR. KUHLMAN: Object to form.

A. Are you talking about the Jasper dragging case?

Q. (BY MR. SPOHRER) Yes, sir.

10:38 A. I was contacted by the United States Attorney's Office who was assisting the Jasper County District Attorney, who also called me at a time that I happened to be in The Netherlands testifying at the International Tribunal before the war crimes in the former Yugoslavia. They said they had a case that was going to be high profile and contentious. And I would like to think I was hired because of my brilliance and expertise, but I was probably the only forensic psychiatrist they knew.

10:38 Q. And so you testified on behalf of who?

A. I testified three times. I testified twice and I was called by the state. And I testified the third time, I was called by the defense attorney.

10:38 Q. There were three men charged with that

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10:38 dragging death. Is that right?

A. That's correct.

Q. And you testified that two of them were white supremacists?

10:38 A. I did.

Q. Excuse me. Strike that. I don't know if that was the testimony. But that this was a premeditated crime of some type?

A. I did. I testified that two of the

10:39 individuals were racially motivated and I thought that they presented a substantial risk for future acts of criminal violence.

Q. And that the third man was not a racist and that did not pose a threat for future violence?

10:39 A. That's correct.

Q. And The Hague, tell me about that, what was that about?

A. That was blind dumb luck. I had testified in Federal Court over in Beaumont in a case

10:39 involving whether a person was competent to plead guilty. And the attorney who later ended up doing the case in The Netherlands at the request of a federal judge from Houston who became one of the first justices of the tribunal, she had another

10:39 psychiatrist for her and they didn't exactly

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10:39 prevail. I was the federal government's witness.

She asked me if I would evaluate a Bosnian accused of war crimes in the former Yugoslavia, Bosnia Herzegovina. I was appointed by the U.N. It

10:40 was a fun case, different standard.

Q. Did you meet a barrister named Jeffrey Nice (sic) over there?

A. I don't remember that name. But that's been four years ago.

10:40 Q. Okay. Tell me about the case involving the Ramirez case, capital murder case. Do you remember that one, sir?

MR. KUHLMAN: Object to form.

A. No.

10:40 Q. (BY MR. SPOHRER) In May of 1999, this involves the shooting of a firefighter?

A. Oh, that was a case out in north Texas in the Lubbock-Amarillo area. It involved the execution. That's another capital case that I was

10:40 involved in as a witness for the state. And there had been some contention between those two individuals, something having to do with a woman. He lured this firefighter out to a remote area, handcuffed him, actually, and shot him in the head

10:40 with a shotgun.

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10:40 Q. Okay.

A. Then fled the area, and committed some other.

Q. Dr. Gripon, how many times have you

10:41 testified in court?

A. I don't know. Many.

Q. Over fifty?

A. Yes.

Q. Over a hundred?

10:41 A. Probably.

Q. Over 200?

A. Well, let's see. I doubt it. But I do most of the evaluations for best interest of children in the two family law courts in Beaumont

10:41 and you end up in court in those quite often.

Q. So between a hundred and 200 times?

A. Yes, probably.

Q. What percentage of your income over the past three years has been as a result of your

10:42 forensic legal work as contrasted with your purely office practice?

A. Probably 20, 25 percent.

MR. SPOHRER: Let's take a break.

THE VIDEOGRAPHER: Time is 10:43.

(Pause from 10:43 to 10:58 a.m.)

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10:57 THE VIDEOGRAPHER: Time is 10:58, we're on the record.

Q. (BY MR. SPOHRER) Doctor, I started out asking you about some of your other cases that you have worked on and I'm going to go through the names of some of these cases and just ask you if you could give me a brief description of what the case was about. The first one was Allen versus Schwartzwald, a 2000 case in which you gave a deposition. Do you remember that case?

10:58 A. No.

Q. One of the attorneys was a Michael Archuleta in Austin, Texas. Doesn't ring a bell?

A. No. That's a plaintiff's firm that does predominantly medical malpractice work which I have done a number of evaluations of people on the damage. But that one doesn't -- read it to me again, the name.

Q. Allen versus Schwartzwald, S-c-h--

10:58 A. Yeah, I know who that is. I didn't recognize the Schwartzwald. That actually was against Texas Children's Hospital, a number of doctors, and I don't remember who all else, here in Houston.

10:58 It involved a child who was asthmatic who

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lived out in Stafford or out towards Sugar Land. The child was treated there several years before, had an anoxic episode, experienced substantial brain damage. And I evaluated the family and the family dynamics and the impact of all that on the family for the plaintiffs' lawyer.

Q. Okay. The case of Day versus Bergeron, November of 2000, Robert King Monk of Port Arthur, Texas took your deposition. Does that ring a bell?

A. No.

Q. The case of Gillespie versus Black, October of '97?

A. No.

Q. Doesn't ring a bell?

A. No.

Q. That was a medical malpractice case? Let me back up.

The Day versus Bergeron case was perhaps involving a patient of yours treated for depression for three years. You saw the patient on a certain day and the patient died the next day of an overdose of drugs?

MR. KUHLMAN: Object to form.

Q. (BY MR. SPOHRER) Don't recall?

A. I don't remember specifics of that.

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11:00 Q. All right. Coghlan, C-o-g-h-l-a-n versus Profitt, P-r-o-f-i-t-t?

A. That again involved a Paul Profitt is a neurologist over in the mid-county area near Beaumont. I don't remember the facts of that case though. I would have to have it before me.

Q. What about the case of Foster versus The City of Jasper?

A. That was a personal injury case. I don't remember the specifics of that. The individual was claiming some kind of injury on the job and they worked for the City of Jasper.

Q. The case of Doe versus Neely, a '94 case?

A. No, that's too long ago. I don't remember that one.

Q. The case of Gonzalez versus Buitron, B-u-i-t-r-o-n?

A. No.

Q. Hutto versus M.W. Kellogg Company?

A. The cereal company.

Q. Choate versus Metal Products Company?

A. No.

Q. Perkins versus American Honda Motor Company?

A. I had a number of motorcycle cases

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11:01 involving accidents and injuries and that sort of thing, Honda, Suzuki. I don't remember that specific case.

Q. What was your role in the motorcycle

11:02 cases?

A. Normally, it's to see the individual, if alive, or the family if they have lost someone, and make some kind of assessment as to any mental issues involving, I think as y'all refer to it as mental

11:02 anguish, pain and suffering.

(Gripon Exhibit Nos. 1 & 2 marked.)

Q. I have put in front of you, Doctor, what I will mark as Exhibit 2 to this deposition. Exhibit 1 is a composite exhibit which contains the

11:02 materials from your file folder on this case, your office file on this case, and obviously does not contain the depositions.

Exhibit 2 is a transcript of a speech that Mike McMullin gave to two football teams involving

11:02 his use of smokeless tobacco and this was apparently sent to you in August by the Jacob Medinger firm. Is that right?

A. That's correct.

Q. Did you have a chance to review that?

11:02 A. I read it and I also have a copy of the

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videotape.

Q. What is your -- what is your view of the value of this information in your assessment? By that I mean, this was Michael McMullin speaking to a group of young men before any lawsuit was filed and talking to them candidly about his use of smokeless tobacco.

MR. KUHLMAN: Object to form.

A. It just helped me understand what he had to say about that at that period of time.

Q. (BY MR. SPOHRER) Okay. Did that help you understand his -- whether there was any physical dependence on the use of this product?

A. I don't remember that it specifically did. I would have to review it again.

Q. If one described a loss of control as a result of the use of the product, would that indicate to you some physical dependence?

MR. KUHLMAN: Object to form.

A. Not necessarily. Loss of control normally would be a -- emotional would be something related to one's cognitive ability to control and compulsivity and that sort of thing, not a physical response.

Q. (BY MR. SPOHRER) Is a weight loss after

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quitting use of a tobacco product a physical response?

A. It's a physical response to something. I don't know that it would be related necessarily to tobacco since most people report a weight gain, but clearly weight loss, depending on any number of factors, could be.

Q. So if one quits using a tobacco product and has a weight gain, what does that indicate according to the DSM-IV?

MR. KUHLMAN: Object to form.

A. Well, again, one would have to ask the person whether their eating habits have changed, whether they've changed in response to some kind of oral gratification, some tendency to put something in their mouth, in lieu of whatever they were doing, that kind of thing. So it could be associated.

Q. (BY MR. SPOHRER) Michael actually reported a -- I may have misspoke. He reported at page 16 a 20-pound weight gain after quitting. Do you see that?

MR. KUHLMAN: Object to form.

A. On what page?

Q. (BY MR. SPOHRER) Page 20 -- I'm sorry, page 16, a 20-pound weight gain.

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11:04 A. 16. Yes, sir.

Q. That actually is one of the diagnostic criteria for nicotine withdrawal, isn't it?

A. It can be associated, yes.

11:04 Q. So did your review of this document impact your opinion with respect to whether or not this young man had any withdrawal symptoms?

MR. KUHLMAN: Object to form.

A. He didn't answer that question for me, no,

11:05 but I considered it in my opinion.

Q. (BY MR. SPOHRER) Okay. This whole concept, Doctor, of quitting and whether one is -- I think the term that you used was that he didn't have adequate motivation. I want to explore that a

11:05 little bit more with you.

Isn't that an incredibly subjective assessment for one human being to make of whether another had adequate motivation to do anything?

MR. KUHLMAN: Object to form.

11:05 A. Certainly, I think you could claim one had adequate motivation only in circumstances in which one were successful. In any setting in which one fails to succeed, it would raise the question of was there motivation adequate for the task or to

11:06 accomplish what they were truly trying to do.

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11:06 Then there is subjectivity in assessing how legitimate the effort was, whether they were truly motivated or only stated that.

It has always been a problem in my opinion in regard dependency issues, determining the motivation of a person to stop that; and that includes issues not involving biology. Gambling addiction. Some people report sexual addiction, internet addiction, shopping addiction. The motivation is always a substantial factor and it's going to be a subjective assessment.

Q. What does the DSM-IV say about how a subjective assessment fits into the diagnosis of whether one has a dependence disorder?

A. I don't know. I would have to review it. I don't know. As we sit here this morning, I couldn't tell you.

Q. When you are treating your patients and they tell you that they are addicted to a substance, do you believe them?

MR. KUHLMAN: Object to the form.

A. I don't use the term "addiction." Addicted to that substance, I would certainly believe that they have difficulty controlling their utilization or use of that and I see it in regard to

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11:07 pain killers and all kinds of things.

Certainly, I do a lot of work with people trying to control various aspects of their life. I don't disbelieve them per se, particularly if they want to diminish their utilization.

11:07

Q. (BY MR. SPOHRER) Have you ever received any moneys from U.S. Smokeless Tobacco or U.S. Tobacco Company for any work other than work on the three cases that we discussed?

11:07 A. No.

Q. In other words, they have never funded any research projects for you or anything like that?

A. I don't do research. I'm a clinician. They never funded any of mine.

11:07 Q. Do you believe the products which contain a dependence producing substance should contain that information somewhere for the consumer?

MR. KUHLMAN: Object to form.

A. I think if there is the potential for becoming dependent on something, then one should be aware of that, yes.

11:08

Q. (BY MR. SPOHRER) I may have asked you this, but do you have any work plan between now and the time of trial? And I'm thinking in terms of any additional research you plan on doing, any exhibits

11:08

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you plan on preparing, anything like that?

A. No.

Q. In your work have you had a chance to review the report of the Surgeon General of the United States on nicotine addiction?

A. In the past in part. Maybe in total over a number of years, but certainly not recently.

Q. Okay. Do you believe that to be an authoritative source of information on the subject of nicotine addiction?

MR. KUHLMAN: Object to the form.

A. I think it states the Attorney General's opinion. Not the Attorney General, I'm sorry, the Surgeon General.

Q. (BY MR. SPOHRER) Yes, it's the Surgeon General. It's part of the Public Health Service Centers for Disease Control, U.S. Department of Health and Human Services. Do you accept that as the work of scientists and health care professionals who have studied the work, the issue of nicotine addiction?

MR. KUHLMAN: Object to form.

A. Yes.

Q. (BY MR. SPOHRER) Did you form any opinion on the injuries Michael McMullin has sustained,

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11:10 either physical injuries or psychological or psychiatric injuries as a result of this incident?

A. No.

MR. KUHLMAN: Object to the form.

11:10 Q. (BY MR. SPOHRER) You have not been asked to do that and you have not done that?

A. True to both of those.

Q. Okay. That's all I got, Doctor. Thanks very much.

11:10 A. Thank you.

MR. KUHLMAN: Let's just take a two minute recess, see if I have any questions.

MR. SPOHRER: Okay.

THE VIDEOGRAPHER: Time is 11:11, 11:10 going off the record.

(Pause from 11:11 to 11:19 a.m.)

MR. SPOHRER: Just make a note that Dr. Gripon is reserving his right to read and sign his deposition and that they are reserving their 11:19 questions.

(Concluded at 11:20 a.m.)

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CHANGES and SIGNATURE DEPOSITION of

EDWARD GRIPON, M.D.

PAGE	LINE	CHANGE	REASON

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EDWARD GRIPON, M.D.

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I, EDWARD GRIPON, M.D., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
EDWARD GRIPON, M.D.

THE STATE OF TEXAS)

COUNTY OF _____)

Before me, _____, on this day personally appeared EDWARD GRIPON, M.D., known to me or proved to me under oath or through _____ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2002.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:_____

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THE STATE OF TEXAS :

REPORTER'S CERTIFICATE

I, Elaine P. Maspero, Certified Shorthand Reporter and Notary Public in and for the State of Texas, hereby certify that this deposition transcript is a true record of the testimony given by the witness, CARL PHILLIPS, Ph.D., after said witness was duly sworn or affirmed by me.

I further certify that I am neither attorney nor counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken. Further, I am not a relative or employee of any attorney of record in this case, nor do I have a financial interest in the action.

Certified to on this 30th day of September, 2002.

Elaine P. Maspero

Elaine P. Maspero, CSR #320
Notary Public in and for
The State of T e x a s
Certification expires 12-31-02
Commission expires 8-11-05

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ELAINE P. MASPERO
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